

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Alexandria Division



DEVIL'S ADVOCATE, LLC, *et al.*, )  
Plaintiffs, )  
 )  
v. )  
 )  
ZURICH AMERICAN INSURANCE )  
COMPANY, )  
Defendant. )

Case No. 1:13-cv-1246

**ORDER**

On May 27, 2014, an Order issued denying the portion of plaintiffs' motion (Doc. 25) asking the Court to reconsider the portion of the May 16, 2014 Order granting defendant's motion to dismiss. The May 27, 2014 Order took under advisement the portion of plaintiffs' motion seeking leave to amend the Complaint, and further ordered defendant to submit further supplemental briefing on whether the Court should grant plaintiffs leave to amend the Complaint. Defendant has submitted the required supplemental briefing, and the motion is now ripe for consideration.

As defendant correctly notes in its brief in opposition, plaintiffs' motion for leave to amend would be futile, because plaintiffs' proposed amendments to the Complaint add no new facts that would allow plaintiffs' claims to survive a motion to dismiss. As the Fourth Circuit has stated, a motion to amend should not be granted when the amendment sought is futile,<sup>1</sup> and an amendment to a Complaint is futile when it fails to state a claim under Rule 12(b)(6), Fed. R. Civ. P.<sup>2</sup>

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<sup>1</sup> *Laber v. Harvey*, 438 F.3d 404, 426 (4th Cir. 2006).


<sup>2</sup> See *Frank M. McDermott, Ltd. v. Moretz*, 898 F.2d 418, 420-21 (4th Cir. 1990) ("There is no error in disallowing an amendment when the claim sought to be pleaded by amendment plainly would be subject to a motion to dismiss under Fed. R. Civ. P. 12(b)(6).").

Accordingly, for the reasons stated above, and for good cause,

It is hereby **ORDERED** that plaintiffs' motion for reconsideration and to amend the Complaint (Doc. 25) is **DENIED**.

The Clerk is directed to send a copy of this Order to all counsel of record.

Alexandria, Virginia  
June 10, 2014

  
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/s/ T. S. Ellis, III  
United States District Judge